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\_\_\_\_\_  
Carmel Valley Del Mar  
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August 28, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**RECEIVED**

SEP 2 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: RM-9150

Dear Mr. Caton:

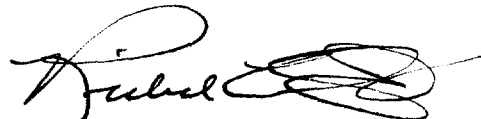
Enclosed are an original and four (4) copies of the Comments of the Keller Peak Repeater Association ("KPRA") for filing in the above-reference proceeding before August 31, 1997.

Also enclosed is one (1) additional copy to be conformed and returned in the enclosed stamped, self addressed envelope.

Thank you for your prompt attention to this matter.

Very truly yours,

ANGLIN & GIACCHERINI



Richard L. Anglin, Jr.

RLA:mme  
Enclosures

cc: Mr. Frederick W. Finke, President, Keller Peak Repeater Association  
Mr. Nicholas E. Schmitz, Treasurer, Keller Peak Repeater Association

No. of Copies rec'd  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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SEP 2 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Parts 0 and 1 of the )  
Commission's Rules to Improve the )  
Procedures for Addressing Serious Rule ) RM-9150  
Violations in the Amateur Radio Service, )  
and to Create a Private Sector Complaint )  
Procedure )  
\_\_\_\_\_ )

**COMMENTS OF**  
**THE KELLER PEAK REPEATER ASSOCIATION**

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**SUMMARY OF THE COMMENTS OF  
THE KELLER PEAK REPEATER ASSOCIATION**

The Keller Peak Repeater Association ("KPRA") wholeheartedly supports Commission action to create a streamlined, privatized enforcement process for rule violations in the Amateur Radio Service. Specifically, KPRA requests that the Commission apply the procedures it has proposed for formal complaints against common carriers in CC Docket 96-238 to the Amateur Radio Service.

KPRA opposes the proposed limited in the Petition that only members of the Amateur Auxiliary of the American Radio Relay League be allowed to tender cases to the Commission's Chief Administrative Law Judge. There is no such limitation on formal complaints against common carriers and no reason in law or fact for any limitation here.

KPRA has already filed a document captioned "Formal Complaint" with the Commission which meets the standards and procedures proposed in CC Docket 96-238. A court of competent jurisdiction determined that KPRA's evidence of malicious interference established a *prima facie* case. Furthermore, after an evidentiary hearing, the defendant was sentenced to jail for contempt based upon harassment via malicious interference on frequencies in the Amateur Radio Service. KPRA's extant Formal Complaint demonstrates that any person or entity is capable of presenting to the Commission a complaint conforming to its proposed procedures in CC Docket 96-238 as adopted for the Amateur Radio Service.

KPRA requests that the Commission act expeditiously to adopt the proposed procedures and to make those procedures available to any amateur licensee.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 0 and 1 of the	)	
Commission's Rules to Improve the	)	
Procedures for Addressing Serious Rule	)	RM-9150
Violations in the Amateur Radio Service,	)	
and to Create a Private Sector Complaint	)	
Procedure	)	
_____	)	

**COMMENTS OF**  
**THE KELLER PEAK REPEATER ASSOCIATION**

The Keller Peak Repeater Association ("KPRA"), an unincorporated association of amateur radio operators, by its counsel, hereby comments on the Petition for Rule Making, RM-9150 ("Petition"), filed by the American Radio Relay League, Incorporated ("ARRL" or "League" or "Petitioner"), requesting an amendment to Part 0 and Part 1 of the Commission's regulations to create a privatized enforcement process for rule violations in the Amateur Radio Service.

KPRA wholeheartedly supports Commission action to create a streamlined, privatized enforcement process for rule violations in the Amateur Radio Service.

However, for the reasons stated below, KPRA opposes the proposed limitation that only members of the League's Amateur Auxiliary be allowed to tender cases to the Commission's Chief Administrative Law Judge ("ALJ"). This procedure should be available to any person or entity licensed in the Amateur Radio Service who establishes a *prima facie* case according to the procedures and standards to be established by the Commission.

I. THE COMMISSION HAS ALREADY PROPOSED A FORMAL COMPLAINT PROCEDURE EASILY ADAPTED TO THE AMATEUR RADIO SERVICE

1. As the Petition points out,<sup>1</sup> the Commission has proposed procedures for formal complaints against common carriers in CC Docket 96-238.<sup>2</sup> Those procedures *perforce* conform to the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Administrative Procedure Act and the Commission's own Rules and procedures. Application of those procedures to the Amateur Radio Service would likewise conform to established legal standards.

2. A complaint conforming to the Commission's proposed procedures would be the basis of establishing a *prima facie* case against the named defendant(s). The Commission's Chief ALJ would make a *prima facie* determination in the same

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<sup>1</sup> Petition, ¶ 23, at 23.

<sup>2</sup> See, Notice of Proposed Rulemaking ("NPRM"), FCC 96-460, released November 27, 1996.

manner as today in Commission-originated enforcement actions. Thus, there would be a uniformity of application of judicial standards across all Commission licensees.

3. KPRA agrees with the Petitioner that the number of cases of amateur malicious interference to be presented to the Commission's Chief ALJ pursuant to this procedure will be small.<sup>3</sup> First, Amateur Radio Service licensees are for the most part conscientious adherents to Commission Rules and good amateur practice. The number of truly "bad eggs" is small.<sup>4</sup> Second, the proposed procedures establish a high threshold of performance, both legally and in terms of collection of evidence. Target defendant(s) conduct will have to be sufficiently egregious to motivate concerted effort to file and prosecute a complaint with the Commission.

4. The proposed procedures are a complement to the Commission's own actions. Nothing in the Petition interferes with or supplants the Commission's prerogatives.

5. For all of the reasons stated above, KPRA requests that the Commission apply the formal complaint procedures proposed in CC Docket 96-238 to the Amateur Radio Service.

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<sup>3</sup> See, Petition, ¶ 20, at 21.

<sup>4</sup> But, their conduct is truly egregious and warrants severe Commission action.

II. THE PROPOSED FORMAL COMPLAINT PROCEDURE SHOULD BE AVAILABLE TO ANY PERSON OR ENTITY LICENSED IN THE AMATEUR RADIO SERVICE

6. The formal complaint procedures proposed in CC Docket 96-238 are not limited to particular persons or entities. Rather, those procedures are available to anyone who meets the standards proposed by the Commission, primarily, the sufficiency of the *prima facie* showing. Assuming, *arguendo*, that the formal complaint procedures proposed in CC Docket 96-238 are applied to the Amateur Radio Service, there is no reason in law or fact to in any way limit the availability of those procedures to any designated person, entity or group. Any person or entity licensed in the Amateur Radio Service should be able to present a case conforming to the Commission's procedures its Chief ALJ for a *prima facie* determination.

7. The Commission has already received a "formal complaint" from KPRA which conforms to the proposed procedures.<sup>5</sup> KPRA's Formal Complaint complied fully with the Commission's proposed procedures. It contains:

(a) a full recitation or statement of facts believed to be relevant, along with supporting affidavits (sworn under penalty of perjury) and documentation, including transcripts (numerous) of the offending transmissions along with one hundred fifty (150) tapes and affidavits (sworn under penalty of perjury) of the

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<sup>5</sup> Formal Complaint and Petition for Forfeiture, Suspension and Revocation, filed October 18, 1995, against Ronald R. Ames, WB6RSD, Sheron Ames, KC6ZSH, Ronald J. Baker, KO6UB, Jeffrey Palulis, KE6HGV, Thomas Poth, KD6NHK, Paul E. Powell, KD6VKJ, Ivan J. Simer, KE6UYS, William M. Smith, N6HNW, and Ralph L. Wallace, KD6GUA ("Formal Complaint").



procedures used in obtaining the tapes, sufficient on its face to establish repeated instances of malicious interference and the identity of the perpetrators and how they were identified;

(b) copies of all documents and evidence in KPRA's custody and control, as well as a description of documents and evidence in the custody and control of others;

(c) the name and addresses of individuals and organizations likely to have discoverable evidence relevant to the Formal Complaint;

(d) a prayer for specific relief against each defendant;

(e) a statement of good faith efforts to resolve or mediate the matter and a description of those efforts;<sup>6</sup>

(f) a description of other adjudicatory proceedings involving the same parties and same facts.

8. KPRA's Formal Complaint was filed before even the Commission's NPRM in CC Docket 96-238 was released. The evidentiary bases of KPRA's Formal Complaint were the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Administrative Procedure Act, and the Commission's Rules and procedures as they existed at the time it was compiled.<sup>7</sup>

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<sup>6</sup> *See*, ¶¶ 9-24, *infra*.

<sup>7</sup> KPRA was compelled to file its Formal Complaint with the Commission because despite the League's full knowledge of Mr. Ames' and his disciples' continuing malicious interference as documented by its own Official Observers ("OOs"), the League not only failed to act pursuant to the existing Amateur Auxiliary Agreement between the League and the Commission but certain League officials acted to prevent any reports of malicious interference by Mr. Ames and his disciples from reaching the Commission.

9. On November 17, 1993, the Superior Court of California for the County of San Bernardino<sup>8</sup> granted a Temporary Restraining Order ("TRO") and on January 12, 1994, a Preliminary Injunction against Mr. Ronald R. Ames, WB6RSD, and "all persons acting under, in concert with, or for" him:

(e) *contacting and harassing members of Plaintiffs [the Keller Peak Repeater Association].*

10. On November 6, 1995, KPRA obtained an Order to Show Cause re Contempt for Violation of Entered Preliminary Injunction ("OSC") and the Court issued subpoenas to Mr. Ames, WB6RSD, his wife, Mrs. Ames, KC6ZSH, and Messrs. Baker, KO6UB, Powell, KD6VKJ, Smith, N6HNW, and Wallace, KD6GUA. The OSC was issued upon demonstration of a *prima facie* case against defendants using the identical evidence presented to the Commission in KPRA's Formal Complaint.

11. An evidentiary hearing was held and on January 4, 1996, the Court found Mr. Ames in contempt for violation of the Preliminary Injunction for harassing members of the KPRA Board of Directors via malicious interference on frequencies in the Amateur Radio Service.<sup>9</sup>

12. Mr. Ames was sentenced to fifteen (15) days in jail and fined Three Thousand Dollars (\$3,000), the maximum sentence for the three counts found. Immediately after a sentencing hearing on February 26, 1996, Mr. Ames began serving

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<sup>8</sup> Keller Peak Repeater Association v. Ronald R. Ames, Superior Court of California for the County of San Bernardino, Case Number (MF) SCV 08033, *appeal docketed*, E018278 (4th App. Dist. April 29, 1996).

<sup>9</sup> All of the other parties were dismissed on procedural grounds.

ten (10) days of his sentence. The remainder of his sentence was suspended pending a further evidentiary hearing on Mr. Ames' conduct in the interim.

13. A further evidentiary hearing was held on August 26, 1996. It was demonstrated that Mr. Ames was continuing his harassing conduct via malicious interference on the frequencies 146.385/146.985 MHz and he was sentenced to spend the additional five (5) days in jail, which he did.

14. At that time Mr. Ames failed to pay the fine and judgment was entered against him.

15. Thus, a court of competent jurisdiction has judicially found harassment by malicious interference on amateur radio frequencies in violation of 47 C.F.R. §§ 97.101(d) based upon the very evidence presented to the Commission in KPRA's Formal Complaint.

16. KPRA's extant Formal Complaint demonstrates that any person or entity is capable of presenting to the Commission a complaint conforming to its proposed procedures in CC Docket 96-238 as they may apply to the Amateur Radio Service. Hence, there is no need to restrict the availability of the proposed procedure to Petitioner.

## CONCLUSION

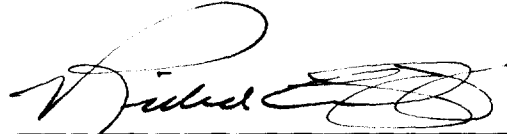
KPRA wholeheartedly supports Commission action to create a streamlined, privatized enforcement process for rule violations in the Amateur Radio Service and requests that the Commission apply the procedures proposed in CC Docket 96-238. KPRA opposes the proposed limitation that only members of the Petitioner's Amateur

Auxiliary be allowed to tender cases to the Commission's Chief ALJ. There is simply no valid reason in law or fact for this limitation. This procedure should be available to any person or entity licensed in the Amateur Radio Service who establishes a *prima facie* case according to the procedures and standards to be established by the Commission.

KPRA further requests that the Commission act expeditiously in establishing these procedures for the Amateur Radio Service.

Respectfully submitted,

ANGLIN & GIACCHERINI  
ATTORNEYS AT LAW



Date: August 28, 1997

By: Richard L. Anglin, Jr., Esq.  
Attorneys for the Keller Peak  
Repeater Association

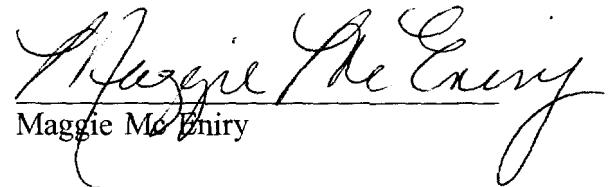
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CERTIFICATION OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing Comments of the Keller Peak Repeater Association in RM-9150 has been sent by United States first class mail, postage prepaid, this 28th day of August, 1997, to the following:

Mr. Christopher D. Imlay, Esq.  
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Maggie McEniry